E. I. du Pont de Nemours and Company *and* Neoprene Craftsmen Union affiliated with International Brotherhood of Du Pont Workers. Case 9–CA–28338

September 21, 1992

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

On April 30, 1992, Administrative Law Judge John H. West issued the attached decision. The Charging Party filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order, which is modified to reflect the amended remedy.

The judge found that the Respondent violated Section 8(a)(5) of the Act by unilaterally repudiating article IV, section 5(e) of the collective-bargaining agreement.[1] The Charging Party excepts to the judge's remedy, however, contending, inter alia, that it is incomplete. We have decided to grant the exception, in part, and to modify the remedy.

The relevant facts are as follows. The unit at the Respondent's plant consists of four master seniority divisions. By early February 1991, the Respondent had determined that it needed 12 additional employees in the operations master seniority division. Article IV, section 5 of the collective-bargaining agreement sets forth the method for filling vacancies in a seniority division. The first four steps in the process call for promotion, return of eligible employees to their ''home'' seniority units, reemployment of laid-off employees, and job bidding. The final step, section 5(e), provides for hiring new employees. The Respondent unilaterally decided, however, that if the 12 vacancies were not filled after the first 4 steps, it would fill the remaining vacancies by transferring employees from the auxiliary master seniority division to the operations division and use subcontractors to do work previously done by those transferees. The Union opposed the Respondent's plan, asserting that it was inconsistent with the terms of the collective-bargaining agreement and the parties' past practice. The agreement is silent regarding the involuntary transfer of employees.

There were no employees eligible for promotion or for recall from layoff. Three employees returned to their ''home'' seniority units, and four vacancies were filled by job bidding. Five employees were forced to transfer to the operations division.[2]

The judge found that the forced transfers violated the Act. He ordered that the five employees, on request, be returned to their former positions and that they be made whole, and that the Respondent cease and desist from unilaterally modifying the collective-bargaining agreement. In its exceptions the Charging Party contends that the remedy is incomplete because it responds only to the Respondent's refusal to bargain collectively and the improper transfer of employees between master seniority divisions, while failing to remedy the Respondent's repudiation of the agreement. It further contends that the Board can effect a complete remedy only by ordering the Respondent to hire 12 new employees pursuant to article IV, section 5, of the collective-bargaining agreement.

We agree, in part, with the Charging Party that the recommended remedy does not fully remedy the Respondent's unfair labor practice. As explained below, we shall order that the status quo ante be restored to the time of the Respondent's unlawful conduct and that the Respondent fill any resulting vacancies by applying article IV, section 5(e), of the collective-bargaining agreement.

We note at the outset that the Respondent's use of subcontractors is not at issue in this case. Similarly, the parties did not litigate the issue whether the job-bidding process was tainted by the Respondent's actions, although in its brief the Charging Party made a bare allegation that the four employees who bid on the vacancies were coerced by the threat of job loss. We are concerned here solely with the Respondent's conduct and its effect on the five employees who were forced to transfer.

The record supports the judge's finding that, had the Respondent abided by the collective-bargaining agreement with the Union, it would have hired five employees after the process required by article IV, section 5(a) through section 5(d), succeeded in filling only 7 of 12 vacancies. It is undisputed that section 5(e), the final step in the process, requires the Respondent to fill vacancies by hiring employees. Nonetheless, when the Union's attorney insisted that the Respondent was obligated under the bargaining agreement to hire new employees if the job bidding process did not fill the vacancies, Labor Relations Specialist James Guidice explained that a mandate from the Respondent's home office prohibited the hiring of new employees. Thus, we adopt the judge's finding that the Respondent refused to bargain by unilaterally repudiating the collective-bargaining agreement requirement that it hire new employees to fill the vacancies.

[1] No exceptions were taken to this finding.

[2] The Charging Party has excepted to the judge's failure to identify these employees. We shall leave that matter to compliance.

The Respondent, as the judge found, violated the Act when it forced five employees to transfer to the operations division instead of hiring employees pursuant to section 5(e). Accordingly, we shall require the Respondent, on request, to return the five transferees to their former positions and to fill any resulting vacancies by applying article IV, section 5(e), of the collective-bargaining agreement. We shall permit the Respondent to make a showing, at the compliance stage of these proceedings, of any changed circumstances that would justify not filling the resulting vacancies.

AMENDED REMEDY

We amend the remedy and shall require the Respondent to fill any vacancies which occur as a result of this decision by applying article IV, section 5(e), of the collective-bargaining agreement.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge, as modified below, and orders that the Respondent, E. I. du Pont de Nemours and Company, Louisville, Kentucky, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(a).

''(a) On request of the Union and if the five employees adversely affected by the unlawful change desire to return to their former positions, rescind the transfers which resulted in a violation of the Act, restore these employees to their former positions, and fill the resulting vacancies by applying article IV, section 5(e), of the collective-bargaining agreement.''

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively with the Neoprene Craftsmen Union affiliated with International Brotherhood of Du Pont Workers as your exclusive representative by making unilateral changes in your terms and conditions of employment without first reaching agreement with the Neoprene Craftsmen Union affiliated with International Brotherhood of Du Pont Workers concerning such changes.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your rights under Section 7 of the National Labor Relations Act.

WE WILL, on request of the Neoprene Craftsmen Union affiliated with International Brotherhood of Du Pont Workers and if the five employees affected by the unilateral change desire to return to their former positions, rescind the five transfers which resulted in a violation of the Act, restore these employees to the positions they held before their transfers, and fill any resulting vacancies by applying article IV, section 5(e), of the collective-bargaining agreement.

WE WILL make whole the five employees who may have been adversely affected by our unilateral repudiation of a provision of the collective-bargaining agreement on or about April 1, 1991, with interest.

E. I. DU PONT DE NEMOURS AND COMPANY

Eric V. Oliver, Esq., for the General Counsel.
Charles E. Mitchell, Esq., of Wilmington, Delaware, for the Respondent.
Max J. Goldsmith, Esq., of Louisville, Kentucky, for the Charging Party.

DECISION

STATEMENT OF THE CASE

JOHN H. WEST, Administrative Law Judge. Upon a charge filed March 1, 1991,[1] as amended on April 9, by Neoprene Craftsmen Union affiliated with International Brotherhood of Du Pont Workers (Union), a complaint was issued April 16 alleging that E. I. du Pont de Nemours and Company (Respondent) violated Sections 8(a)(1) and (5) and 8(d) of the National Labor Relations Act (Act) by failing since April 1 to continue in full force and effect all the terms and conditions of the collective-bargaining agreement with the Union in effect at the time by filling certain job positions through transfers and subcontracting rather than through hiring new employees as required by said agreement. Respondent denies that it violated the Act.

A hearing was held in Louisville, Kentucky, on November 1. On the entire record in this case, including my observation of the demeanor of the witnesses and consideration of the briefs filed by General Counsel, the Respondent and the Charging Party, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a corporation, is engaged in the manufacture and sale of neoprene, Freon, and related products in Louisville. The complaint alleges, the Respondent admits, and I find that at all times material, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union has been a labor organization within the meaning of Section 2(5) of the Act.

[1] Unless indicated otherwise, all dates are in 1991.

II. THE ALLEGED UNFAIR LABOR PRACTICE

THE FACTS

Respondent and the Union entered into their most recent collective-bargaining agreement on April 17, 1989. (C.P. Exh. 1.) By its terms, article XVI, section 1 thereof, the collective-bargaining agreement continued in full force and effect through March 21 and from year to year thereafter unless, at least 60 days prior to any expiration date, either party notifies the other in writing of its desire to terminate the collective-bargaining agreement. Since neither party gave notice 60 days before March 21, at the time of the hearing herein the collective-bargaining agreement was effective through March 21, 1992.

The involved plant, as set forth in article IV, section 2 of the collective-bargaining agreement, consists of four master seniority divisions, namely, engineering, operations, auxiliary, and fireman. The first three named divisions consist of specified units.

Beginning in December 1990 and ending in early February 1991, Respondent held a number of manpower meetings. It was determined that Respondent needed 12 additional employees in operations but that in view of economic conditions and its cost-reduction program, it would not hire 12 people. No consideration was given to terminating the collective-bargaining agreement and entering into discussions with the Union about the filling of the vacant positions in operations.

Instead, on February 13 Respondent's representatives met with union representatives to discuss the 12 vacancies. James Guidice, an area labor relations specialist, spoke for the Respondent. Carl Goodman, the union president, spoke for the Union. Guidice indicated that Respondent had 12 vacancies and a handout (G.C. Exh. 3) was distributed explaining how Respondent intended to fill these vacancies. It was indicated that if the vacancies were not filled by the bidding process, Respondent would require up to 12 employees in the auxiliary division (8 utility operators and 4 maintenance operators) to transfer to operations to fill the vacancies. Guidice also stated that subcontractors would be used to do part of the work formerly done by those who would be moved to the vacant positions in operations. Goodman stated that there was no contractual authority for what Respondent proposed; that under the collective-bargaining agreement the Respondent was required to hire when it was unable to fill vacancies through the job bidding process; and that the Union would force the issue to arbitration, if necessary. Guidice indicated that Respondent was not going to fill the vacancies by hiring new employees and that he would not be concerned if the Union took the matter to arbitration because by the time it went through the arbitration process, the parties would be into a new contract setting and Respondent would get it in then. When asked by Goodman why Respondent did not reopen the contract by giving notice on January 21, Guidice responded ''[W]e chose not to use that option.'' Goodman indicated that the Union would have to discuss this matter with its attorney and the Union would get back to Respondent.

Article IV, section 5 of the collective-bargaining agreement specifies as follows:

> Section 5. When job vacancies in a seniority unit occur, they will be filled in the following order:
>
> (a) By Promotions. Promotions shall be made within all seniority units on the basis of unit seniority provided the employees have approximately the same qualifications and are qualified to perform the job.
>
> (b) By return of eligible employees within the Master Seniority Division to their ''home'' seniority units. . . .
>
> (c) By reemployment of former employees who were terminated because of lack of work and who are eligible for reemployment under Section 1(b) of this Article and by return of employees outside the Master Seniority Division to their ''home'' Master Seniority Division. . . .
>
> (d) By job bidding. . . .
>
> (e) By hiring of new employees.

Goodman testified that there was no one to promote into these vacancies when they were declared; that the return of eligible employees applied to three named employees; that since no one was on layoff, there was no one to return under section 5(c); and that, therefore, Respondent would have to use job bidding and then hiring of new employees.

On February 20 the parties met again. Max Goldsmith, an attorney, spoke for the Union, indicating that it was clear that under the collective-bargaining agreement the Respondent was obligated, in the existing circumstances, to hire new employees if the job bidding process did not fill the vacancies. Goldsmith insisted that Respondent comply with the express terms of the collective-bargaining agreement. Guidice, while again conceding that Respondent chose not to reopen the contract, pointed out that Respondent would not hire new employees since there was a mandate from its home office in Wilmington, Delaware, prohibiting the hiring of new employees.

On February 21 the parties met again. Respondent was represented by Lida Crowe, Respondent's human relations area specialist and Carl Turner, Respondent's human resource supervisor. Goodman spoke for the Union. Crowe, stated that the process of filling the involved vacancies would begin with eligible employees being permitted to return to their ''home'' seniority units; that the job bidding process would be utilized to fill the remaining vacant positions; that Respondent was not going to hire new employees; and that employees in the auxiliary master division would be forced to transfer to operations if necessary. Goodman indicated that Respondent had no choice but to hire new employees if vacancies were still in existence after the job bidding process was exhausted. Crowe stated that Respondent would utilize the reduction of force provisions of the collective-bargaining agreement to fill any vacancies not filled by the job biding process. Goodman responded ''[h]ow can you have a reduction of force when no one is being laid off.'' Goodman was presented with a set of charts, which assertedly showed Respondent's process of filling the vacancies (G.C. Exh. 5).

On February 22 the involved job vacancies were posted in operations (G.C. Exh. 7). Three of the positions were filled by employees being returned to their ''home'' seniority units. Four of the positions were filled by the job bidding process.

On or about April 1 five employees in the auxiliary master seniority division were forced to transfer into the remaining vacant positions in operations.

Respondent then began utilizing subcontractors to do a portion of the work formerly done by the employees who were utilized to fill the involved vacancies.

When asked at the hearing herein what provision of the collective-bargaining agreement allowed Respondent to force employees out of auxiliary into operations, Crowe testified that the collective-bargaining agreement was silent on that. And when asked how Respondent applied the layoff provisions of the collective-bargaining agreement in order to accomplish the forced movement of the five employees from auxiliary to operations, Crowe testified that the specific steps for laying off employees under Section 7 of the collective-bargaining agreement were not followed by the Respondent in that, contrary to the collective-bargaining agreement, they were not allowed to bump and they were not offered the option of termination or severance. Assertedly utilizing this provision of the collective-bargaining agreement, two of the employees were returned to their former master seniority division, operations. Crowe also testified that in the past the Union had consented to deviations from the collective-bargaining agreement regarding filling vacancies or moving people around. She conceded that in this instance not only the Union but the Union's attorney specifically objected to Respondent not following the collective-bargaining agreement.[2]

Goodman testified that to his knowledge, the Union has never allowed the Respondent to cross master seniority divisions when it was filling a vacancy; that by agreement of the Respondent and the Union there has been movement, apparently across master seniority divisions, of employees who have a medical disqualification; that no one in the plant had ever been laid off during the period involved and that the layoff provision of the collective-bargaining agreement had never been used to reduce the number of employees in one division and at the same time increase the number in another division.

Guidice testified that he researched whether Respondent could utilize the process it wanted to utilize to fill the vacancies by speaking to the expert, Crowe; that the issue that they were discussing was once the Company decided they were not going to follow article IV, section 5(e) of the collective-bargaining agreement what other alternatives were there; that Crowe told him that she had discussed all moves across seniority division lines in the past with the Union; that in his opinion the Union does not have to agree to a move across master seniority divisions; and that he did not believe that the involved section of the collective-bargaining agreement requires Respondent to hire other than when Respondent decides that it wants to hire.

Contentions

General Counsel, on brief, contends that having employees cross master seniority divisions for the purpose of filling job vacancies clearly defies the express terms of the collective-bargaining agreement; that in the past when employees have been moved across master seniority divisions, it has been done pursuant to an agreement between the Respondent and the Union; that here Respondent forced approximately five employees from the auxiliary master seniority division into operations without first obtaining the Union's consent; that Respondent's refusal to comply with the specific terms of the collective-bargaining agreement relative to the filling of job vacancies in operations constitutes a violation of Sections 8(a)(1) and (5) and 8(d) of the Act; that if an employer proposes midterm contractual modifications and the union is opposed to the same, the employer is then required to hold its proposed changes in abeyance until the contract expires; that inasmuch as the intent of article IV, section 5 of the collective-bargaining agreement is crystal clear and given Respondent's unmistakable repudiation of the collective-bargaining agreement and blatant disregard of the Union's rights, there is no basis on which the instant matter can be legitimately deferred; and that, as a remedy, ''Respondent [should] be compelled to follow the express terms of the contract in a manner as to create a scenario that would have occurred had there been no repudiation of said contract.''

Charging Party, on brief, argues that whether the seven employees who bid into operations did so voluntarily is debatable in light of the fact they had been told their jobs in auxiliary were to be eliminated and bidding into operations was the only alternative to termination; that while Respondent asserts that its motivation was economic in nature as the result of market changes and cost reductions, economic necessity is not a cognizable defense to an employer's unilateral change in an existing collective-bargaining agreement; that if Respondent knew it needed to reduce costs and could not hire contrary to the contract, it had a statutory duty and ample opportunity to reopen the collective-bargaining agreement for bargaining on this issue within the prescribed period and with the prescribed notice to the Union; that merely meeting with the Union after the deadline for reopening the contract has passed does not come close to satisfying Section 8(d) of the Act; that inasmuch as the 12 employees who were moved to operations have been in their new positions for some time, it does not appear practical at this time to move them back to auxiliary; and that, therefore, Respondent should be ordered to restore the 12 auxiliary jobs to the bargaining unit and hire new employees to fill those positions as is required by the collective-bargaining agreement.

Respondent, on brief, contends that this dispute inappropriately was denied deferral to arbitration by the Region and by the administrative law judge;[3] that assuming arguendo, that deferral was proper, this dispute nevertheless should be dismissed; that Respondent has not surrendered by article IV, section 5 the right to decide if and when it shall add people to the payroll but when management has determined that new people are to be added it readily concedes that this provision comes into play; that there is no evidence that Respondent was motivated by union animus, was acting in bad faith, or in any way sought to undermine the Union's status as collec-

[2] Contrary to Respondent's assertions, use of the reduction-of-force provision of the collective-bargaining agreement to accomplish some of the transfers was inappropriate. The requirements of that provision were not followed and there was no reduction of force.

[3] Respondent gives no real reason to reverse this ruling other than disagreeing with the conclusions reached by the Board in certain cases, namely, *Oak Cliff-Golman Baking Co.*, 202 NLRB 614 (1973), and *Struthers Wells Corp.*, 254 NLRB 1170 (1979). Obviously I am bound by Board precedent. The language involved herein is clear and unambiguous. Additionally, there is no real question of interpretation. Accordingly, the ruling stands.

tive bargaining representative; that even if General Counsel's interpretation is controlling, it should not necessarily follow that Respondent has refused to bargain within the meaning of the Act, because a mere breach of the collective-bargaining agreement is not in itself an unfair labor practice; that the filling of job positions through transfers and subcontracting rather than through hiring new employees was a permissible midterm contract modification; that where a mandatory subject is not contained in the contract, an employer must bargain in good faith to impasse with union representatives and if no agreement is reached, the employer may unilaterally implement its bargaining proposal with respect to the matter not contained in the agreement; that the collective-bargaining agreement in the instant case is silent with regard to subcontracting;[4] that since the collective-bargaining agreement contains no provision regarding subcontracting, Respondent could, as it assertedly did, bargain in good faith to impasse with the union representatives, and no agreement having been reached, unilaterally implement its bargaining proposal with respect to the matter not contained in the agreement; that Respondent felt that it could ill afford to take on additional people and risk having to turn around and lay them off again, as it had needed to do in the recent past; that, at best, what is involved are conflicting interpretations of the involved contract provision; and that the parties having come to impasse it was available to Respondent to implement the complained-of midterm modification of the contract because the contract is silent with regard to subcontracting.

Analysis

Before treating the merits, a procedural matter must be resolved. The Charging Party has filed a motion to strike the brief of Respondent because it failed to mail a copy of said brief to the Charging Party. Respondent replied pointing out that it was an inadvertent omission and that it was rectified when it was brought to Respondent's attention. The summary above telegraphs the ruling. Respondent has substantially complied with the Board's Rules and Regulations and the Charging Party has not demonstrated that it has in any way been prejudiced by Respondent's initial inadvertent omission. Accordingly, the Charging Party's motion is hereby denied.

The Board in *Nick Robilotto, Inc.*, 292 NLRB 1279 (1989), concluded as follows:

> It is well established that Section 8(a)(5) and (1) and Section 8(d) of the Act prohibit an employer that is a party to an existing collective-bargaining agreement from modifying the terms and conditions of employment established by that agreement without obtaining the consent of the union. . . . The Respondent's claim that it is financially unable to . . . [comply with the involved provision of the collective-bargaining agreement] does not constitute an adequate defense to an allegation that an employer has violated Section 8(a)(5) and (1) and Section 8(d) of the Act by failing to abide by a provision of a collective bargaining agreement. *General Split Corp.*, 284 NLRB 418 (1987).

Here Respondent unilaterally modified the collective-bargaining agreement. It did not assert herein that it was financially unable to comply with the involved provision. Its claim of economic necessity does not constitute an adequate defense. *NLRB v. Manley Truck Line*, 779 F.2d 1327 (7th Cir. 1985)

Two cases cited by Respondent, *NCR Corp.*, 271 NLRB 1212 (1984), and *Auto Workers Local 547 v. NLRB*, 765 F.2d 175 (D.C. Cir. 1985), are distinguishable in that in the former, unlike here, certain articles in the involved collective-bargaining agreement gave rise to equally plausible, different and conflicting interpretations. And in the latter, the employer satisfied all contractual and legal obligations to bargain over its proposed action and the action, unlike here, was fully consistent with the terms of the parties' collective-bargaining agreement. By filling five of the involved vacancies with transfers instead of hiring new employees, Respondent violated the Act as alleged in that the five transfers resulted in a unilateral midterm modification of the collective-bargaining agreement.

Conclusions of Law

1. E. I. du Pont de Nemours and Company is an employer engaged in commerce within the meaning of the Act.

2. The Union is a labor organization within the meaning of the Act.

3. All employees of Respondent employed at its Louisville Works, Louisville, Kentucky including powerhouse and refrigeration plant employees, chief operators, shift leaders, fire department employees, cafeteria employees, and counter attendants, but excluding all office and clerical employees, chemical supervisors, technical engineers, assistant technical engineers, draftsman, chemists, nurses and hospital technicians, general foremen, foremen, fire chief, guards and all other supervisors and professional employees as defined by the National Labor Relations Act, as amended, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times material, the Union has been the exclusive representative of all employees within the said appropriate unit for the purposes of collective bargaining in respect to rates of pay, wages hours of employment, or other terms and conditions of employment within the meaning of Section 9(a) of the Act.

5. By unilaterally repudiating article IV, section 5(e) of the collective-bargaining agreement it has with the Union on or about April 1, 1991, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Sections 8(a)(5) and (1) and 8(d) of the Act.

The Remedy

Having found that Respondent has engaged in unfair labor practices within the meaning of Sections 8(a)(5) and (1) and 8(d) of the Act, I will recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

[4] This allegation is included in this summary not as an indication that it is relevant but rather as an indication of the position which Respondent is taking. Respondent excepts to my refusal to receive in evidence arbitrators' awards dealing with Respondent's subcontracting. The challenged exhibits were not, in my opinion, relevant. This case is not really about subcontracting. This case is about how Respondent filled vacancies by transferring its own employees, some of whom were transferred against their will. Respondent utilized procedures which were contrary to specific provisions in the collective-bargaining agreement in effect at the time. In my opinion, it has not been shown that there is any reason to reverse this ruling.

Having found that Respondent refused to bargain by unilaterally repudiating the collective-bargaining agreement requirement that it hire new employees in the situation specified above, I will recommend that, on request, Respondent restore the situation as it existed with respect to the five employees before it transferred them in violation of the collective-bargaining agreement on order to avoid having to hire new employees, and that it cease and desist from unilaterally modifying the collective-bargaining agreement during its effective term without first reaching agreement with the Union concerning such changes.

I will further recommend that the approximately five employees affected by Respondent's unlawful conduct be made whole for any losses suffered thereby. Any backpay for such employees to be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[5]

ORDER

The Respondent, E. I. du Pont de Nemours and Company, Louisville, Kentucky, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with the Union as the exclusive representative of its employees in the above-described appropriate unit by making unilateral changes in their terms and conditions of employment without first reaching agreement with the Union concerning such changes.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request of the Union and if the five employees want their former positions back, rescind such transfers which resulted in a violation of the Act and restore these employees to the positions they held before their transfers.

(b) Make whole the five employees who may have been adversely affected by the Respondent's unilateral repudiation of the involved provision of the collective-bargaining agreement on or about April 1, 1991.

(c) Preserve and, on request, make available to the Board and its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its plant in Louisville, Kentucky, copies of the attached notice marked ''Appendix.''[6] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

---

[5] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''